

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

McNEIL NUTRITIONALS, LLC,)	REDACTED PUBLIC VERSION
)	
Plaintiff,)	
)	
v.)	C.A. No. 05-069-GMS
)	
THE SUGAR ASSOCIATION, THE)	
AMALGAMATED SUGAR COMPANY, et al.)	
)	
Defendants.)	

DECLARATION OF STEVEN A. ZALESIN

ASHBY & GEDDES
Steven J. Balick (#2114)
John G. Day (#2403)
222 Delaware Avenue, 17th Floor
Wilmington, Delaware 19801
(302) 654-1888
sbalick@ashby-geddes.com
jday@ashby-geddes.com

Attorneys for Plaintiff

Of Counsel:

Steven A. Zalesin
Clay J. Pierce
PATTERSON, BELKNAP, WEBB & TYLER, LLP
1133 Avenue of the Americas
New York, New York 10036
Telephone: (212) 336-2000
Facsimile: (212) 336-2222

Donna Malin
JOHNSON & JOHNSON
One Johnson & Johnson Plaza
New Brunswick, New Jersey 08933

Date: August 5, 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

McNEIL NUTRITIONALS, LLC,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:05-CV-00069-GMS
)	
THE SUGAR ASSOCIATION, THE)	
AMALGAMATED SUGAR COMPANY, et al.)	
)	
Defendants.)	

DECLARATION OF STEVEN A. ZALESIN

STEVEN A. ZALESIN, under penalty of perjury, declares as follows:

1. I am a member of the law firm Patterson Belknap Webb & Tyler LLP, counsel to Plaintiff McNeil Nutritionals, LLC ("McNeil") in the above-referenced matter. I submit this Declaration in opposition to Defendants' Motion to Dismiss.
2. Attached hereto as Exhibit 3 is a true and correct copy of an article by Melanie Warner, entitled "Splenda, the Artificial Sweetener, Adds a Brown Sugar Blend," published in the New York Times, on April 4, 2005.
3. Attached hereto as Exhibit 4 is a true and correct copy of an article by Sonia Reyes, entitled "Sugar Seeks to Sweeten Sales," published in Brandweek, on May 16, 2005.
4. Attached hereto as Exhibit 5 is a true and correct copy of an article entitled "Category Performance: Sugar," published in the Supermarket News, on August 9, 2004.

5. Attached hereto as Exhibit 6 is a true and correct copy of Defendant the Sugar Association's Complaint, dated December 10, 2004, in *Sugar Ass'n Inc. v. McNeil-PPC, Inc. et al*, No. CV -04-10077 (DSF), in the United States District Court for the Central District of California (the "California Action").

6. Attached hereto as Exhibit 7 are true and correct copies of correspondence between Adam R. Fox, counsel for the Sugar Association, and Diana Torres, counsel for McNeil, dated February 7, 2005 and February 8, 2005.

7. Attached hereto as Exhibit 8 is a true and correct copy of an Order Granting in Part Defendants' Motion for Judgment on the Pleadings and Declining to Exercise Supplemental Jurisdiction, dated April 13, 2005, in the California Action.

8. Attached hereto as Exhibit 9 is a true and correct copy of a letter from Carlos Lazatin, counsel for McNeil, to Adam R. Fox, counsel for the Sugar Association, dated July 18, 2005.

9. Attached hereto as Exhibit 10 are true and correct copies of pages cited from American Crystal Sugar Company's official website, located at <http://www.crystalsugar.com/coopprofile/index.asp>, and an article entitled "The Rocky Mountain Sugar Growers Cooperative: 'Sweet' or 'Sugar-Coated' Visions of the Future?," available at <http://www.agmrc.org/NR/rdonlyres/D5FDF006-9F4C-4E91-A1A6-3CBD4EE26583/0/rockymountainsugar.pdf>.

10. Attached hereto as Exhibit 11 are true and correct copies of pages cited from C&H Sugar Company's official website, located at: <http://www.chsugar.com/Consumer/contact.html>, and from Alexander & Baldwin's Form 10K, December 31, 2004,

available at <http://sites.stockpoint.com/wpost/Quote.asp?Symbol=ALEX&Mode=EDGARDISPLAY&ReleaseDate=2004-12-31>.

11. Attached hereto as Exhibit 12 are true and correct copies of pages cited from Imperial Sugar Company's official website, located at <http://www.imperialholly.com/fw/main/default.asp?DOCID=255>.

12. Attached hereto as Exhibit 13 are true and correct copies of pages cited from Imperial Sugar Company's Form 10K, dated December 31, 2004, available from the SEC's official website, located at <http://www.sec.gov/Archives/edgar/data/831327/000119312504209729/d10k.htm>, and from Imperial Sugar Company's official website, investor relations page, located at <http://phx.corporate-ir.net/phoenix.zhtml?c=113809&p=irol-homeProfile&t=&id=&>.

13. Attached hereto as Exhibit 14 are true and correct copies of pages cited from Michigan Sugar Company's official website, located at <http://www.michigansugar.com>.

14. Attached hereto as Exhibit 15 are true and correct copies of pages cited from United Sugar Corporation's official website, located at <http://www.unitedsugars.com>.

15. Attached hereto as Exhibit 16 is a true and correct copy of an article entitled "The Politics of Sugar. Sugar's First Family," located at http://www.opensecrets.org/pubs/cashingin_sugar/sugar08.html.

16. Attached hereto as Exhibit 17 is a true and correct copy of Defendant American Crystal Sugar Company's Objections and Responses to Plaintiff's First Set of Requests for Admission and First Set of Interrogatories.

17. Attached hereto as Exhibit 18 is a true and correct copy of Defendant American Sugar Cane League's Objections and Responses to Plaintiff's First Set of Requests for Admission and First Set of Interrogatories.

18. Attached hereto as Exhibit 19 is a true and correct copy of Defendant American Sugarbeet Growers Association's Objections and Responses to Plaintiff's First Set of Requests for Admission and First Set of Interrogatories.

19. Attached hereto as Exhibit 20 is a true and correct copy of Defendant Atlantic Sugar Association's Objections and Responses to Plaintiff's First Set of Requests for Admission and First Set of Interrogatories.

20. Attached hereto as Exhibit 21 is a true and correct copy of Defendant Hawaiian Sugar & Transportation Cooperative's Objections and Responses to Plaintiff's First Set of Requests for Admission and First Set of Interrogatories.

21. Attached hereto as Exhibit 22 is a true and correct copy of Defendant Imperial Sugar Company's Objections and Responses to Plaintiff's First Set of Requests for Admission and First Set of Interrogatories.

22. Attached hereto as Exhibit 23 is a true and correct copy of Defendant Michigan Sugar Company's Objections and Responses to Plaintiff's First Set of Requests for Admission and First Set of Interrogatories.

23. Attached hereto as Exhibit 24 is a true and correct copy of Defendant Minn-Dak Farmers' Cooperative's Objections and Responses to Plaintiff's First Set of Requests for Admission and First Set of Interrogatories.

24. Attached hereto as Exhibit 25 is a true and correct copy of Defendant Osceola Farm Company's Objections and Responses to Plaintiff's First Set of Requests for Admission and First Set of Interrogatories.

25. Attached hereto as Exhibit 26 is a true and correct copy of Defendant Rio Grande Valley Sugar Growers, Inc.'s Objections and Responses to Plaintiff's First Set of Requests for Admission and First Set of Interrogatories.

26. Attached hereto as Exhibit 27 is a true and correct copy of Defendant Southern Minnesota Beet Sugar Cooperative's Objections and Responses to Plaintiff's First Set of Requests for Admission and First Set of Interrogatories.

27. Attached hereto as Exhibit 28 is a true and correct copy of Defendant Sugar Cane Growers' Cooperative of Florida's Objections and Responses to Plaintiff's First Set of Requests for Admission and First Set of Interrogatories.

28. Attached hereto as Exhibit 29 is a true and correct copy of Defendant Western Sugar Cooperative's Objections and Responses to Plaintiff's First Set of Requests for Admission and First Set of Interrogatories.

29. Attached hereto as Exhibit 30 is a true and correct copy of Defendant Wyoming Sugar, LLC's Objections and Responses to Plaintiff's First Set of Requests for Admission and First Set of Interrogatories.


30. Attached hereto as Exhibit 31 is a true and correct copy of Transcript of Proceedings regarding the Defendant's Motion for Judgment on the Pleadings, dated April 4, 2005, in the California Action.

31. Attached hereto as Exhibit 32 is a table showing: (i) the total volume of sugar sold in 2004 by the Defendants in this matter that have moved to dismiss on personal jurisdiction grounds (the "PJ Moving Defendants"); (ii) the total amount of beet and sugar cane produced in the U.S. in 2004, as reported by the United States Department of Agriculture ("USDA"); and (iii) the percentage of the U.S. 2004 total sugar production produced by these Defendants. The table was prepared based on Defendants' Responses to McNeil's Interrogatory No. 2 (*see* Exs. 17, 20-30 hereto) and data available from the USDA in "Table 16--U.S. beet and cane sugar production (including Puerto Rico), by fiscal year and share of total," available from the Economic Research Service (ERS) website, located at <http://www.ers.usda.gov/Briefing/Sugar/Data/Table16.xls>. A copy of Table 16 is attached hereto as Exhibit 33.

32. Attached hereto as Exhibit 34 are documents produced by Qorvis in response to Plaintiffs First Set of Requests to Defendant Qorvis Communications, LLC for the Production of Documents and Things.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated at New York, New York this 29th day of July, 2005.



Steven A. Zalesin

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of August, 2005, the attached **REDACTED PUBLIC VERSION OF DECLARATION OF STEVEN A. ZALESIN** was served upon the below-named counsel of record at the address and in the manner indicated:

Richard L. Horwitz, Esq.
Potter Anderson & Corroon LLP
Hercules Plaza – Sixth Floor
1313 North Market Street
Wilmington, DE 19801

HAND DELIVERY

James P. Murphy, Esq.
Squire, Sanders & Dempsey LLP
1201 Pennsylvania Avenue, N.W.
Suite 500
Washington, DC 20004

VIA ELECTRONIC MAIL

Adam R. Fox, Esq.
Squire, Sanders & Dempsey LLP
801 South Figueroa Street
Suite 1400
Los Angeles, CA 90017

VIA ELECTRONIC MAIL

Charles Tobin, Esq.
Leo Rydzewski, Esq.
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, DC 20006

VIA ELECTRONIC MAIL

/s/ John G. Day

John G. Day